

Magorrian, Matthew

From: Boyd, Andrew
Sent: Wednesday, April 16, 2014 10:46 AM
To: Grandinetti, Cami; Mackey, Cyndy; Ordine, Charles; Rochlin, Kevin; Albright, Rick; Cohen, Lori; McLerran, Dennis; Woods, Jim; Wernitz, James; MacIntyre, Mark; Jennings, Jannine; Fonseca, Silvina; McDonough, Barbara; McGraw, Sara; Dailey, Anne; Sheldrake, Beth; Myers, Robert; Tyner, Lee
Subject: FW: Shoshonne-Bannock Tribes win appeal in tribal court

Mark Macintyre (R10 Press Office) asked me to let folks know that any press inquiries should be referred to him. He can be reached at:
206-553-7302
Macintyre.Mark@epamail.epa.gov.

Thanks

Andy

Andrew Boyd
U.S. EPA, Region 10
Tel: (206) 553-1222
boyd.andrew@epa.gov
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FOR USE OF RECIPIENTS NAMED ABOVE

From: Sheldrake, Beth
Sent: Wednesday, April 16, 2014 6:28:47 AM
To: Grandinetti, Cami; Mackey, Cyndy; Ordine, Charles; Rochlin, Kevin; Albright, Rick; Cohen, Lori; McLerran, Dennis; Woods, Jim; Wernitz, James; MacIntyre, Mark; Jennings, Jannine
Subject: Fw: Shoshonne-Bannock Tribes win appeal in tribal court

Fyi

From: Edgell, Joe
Sent: Wednesday, April 16, 2014 6:14:36 AM
To: Fonseca, Silvina; McDonough, Barbara; McGraw, Sara; Dailey, Anne; Sheldrake, Beth
Cc: Myers, Robert; Tyner, Lee
Subject: RE: Shoshonne-Bannock Tribes TERO

FYI....

- [/ News](#)

Tribes win appeal against phosphate plant

Tribal member tells panel about duck bursting into flames

FORT HALL, Idaho -

A three-judge appellate court panel has ruled the Shoshone-Bannock Tribes have civil jurisdiction over the FMC Corporation, according to a new release from the tribes.

In a 32-page statement of decision, the court ruling requires FMC to pay the tribes \$1.5 million a year for a waste storage permit as long as waste generated by the company's phosphorous production plant remains within the reservation.

The tribes said the waste stored on the FMC property includes millions of tons of phosphorous slag, at least 16 tons of elemental reactive and ignitable elemental phosphorous, almost a million tons of contaminated soil, and many other hazardous wastes.

FMC Corporation operated the world's largest elemental phosphorous plant in Power County from 1949 to 2001. In September, 2012, the Environmental Protection Agency selected a cleanup plan that included capping of contaminated soil and extraction and treatment of contaminated groundwater. FMC estimated the cleanup would cost \$60 million and take two to three years to complete.

The appeal centered on whether the tribes had civil jurisdiction over FMC, a non-Indian, fee land owner within the Fort Hall Reservation. During two weeks of court hearings, tribal lawyers argued a concept called the "Montana second exception" -- that the fee land threatened the health and welfare of the tribes.

Fort Hall Business Council Chairman Nathan Small testified that the land was no longer cherished by the tribes. "This case is not about capping, excavation, etc. It's about contaminated water, a contaminated ecosystem and threatened hunting and gathering subsistence for my people," he said.

Tribal member and former Tribal Council member Claude Broncho testified that he once witnessed a duck in flight spontaneously ignite after flying out of one of the uncovered FMC ponds.

Shoshone Bannock lawyers argued the conduct of FMC had direct effect on the political integrity, economic security and the health or welfare of the tribe.

In a closing statement, co-counsel Paul Echo Hawk said, "This is the Shoshone-Bannock Tribes' land. The only land they have left. The land is not good any more, the fish & wildlife is not the same (in that area)."

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From: Sheldrake, Beth
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To: Grandinetti, Cami; Mackey, Cyndy; Ordine, Charles; Rochlin, Kevin; Albright, Rick; Cohen, Lori; McLerran, Dennis; Woods, Jim; Wernitz, James; MacIntyre, Mark; Jennings, Jannine
Subject: RE: Shoshone-Bannock Tribes win appeal in tribal court

All – As a brief follow up to my prior message.... The “decision” issued by the Shoshone-Bannock Tribes’ appellate court yesterday is the Court’s “statement of the decision,” which is a preliminary court document with the judges’ view of the case. The Tribes and FMC now have to submit additional findings documents to the Court. The Court then takes its statement, the documents submitted by the parties, and incorporates all of that into a final decision and order in the case. The Tribes anticipate that the Court will issue its final decision by mid-May.

Sorry for any confusion.

Beth

Beth Sheldrake | Unit Manager
U.S. Environmental Protection Agency | Region 10
Office of Environmental Cleanup
Superfund Site Cleanup Unit #1
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From: Sheldrake, Beth
Sent: Wednesday, April 16, 2014 6:29 AM
To: Grandinetti, Cami; Mackey, Cyndy; Ordine, Charles; Rochlin, Kevin; Albright, Rick; Cohen, Lori; McLerran, Dennis; Woods, Jim; Wernitz, James; MacIntyre, Mark; Jennings, Jannine
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POSTED: 05:05 PM MDT Apr 15, 2014

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